

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JOSEPH F. SIRANGELO, VINCENT SIRANGELO,
PHILLIP EMMA, ANGELO SERVIDEO AND JOSEPH
CILLO d/b/a ANNA ERIKA HOME FOR ADULTS

and

Case 29--CA--14594

1115 NURSING HOME AND HOSPITAL EMPLOYEES
UNION, A DIVISION OF 1115 JOINT BOARD

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Devaney

On August 1, 1990, the General Counsel of the National Labor Relations

Board issued an amended complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Cases 29--RC--7128 and 29--RC--7161. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On December 10, 1990, the General Counsel filed a Motion for Summary Judgment. On December 14, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 7, 1991, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits that the Union made a request for bargaining and for information, but denies that it has refused to bargain with the Union or that the information requested is relevant and necessary to the Union's role as bargaining representative. In opposing the motion, the Respondent attacks the validity of the Union's certification on the basis of its objections to the election in the representation proceeding, and renews, in essence, the arguments it made in the underlying representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.¹ See

¹ The Respondent denies complaint par. 18(a) which alleges that since on or about November 29, 1989, the Respondent has failed and refused to bargain with the Union concerning the terms of a collective-bargaining agreement. However, the General Counsel has submitted a copy of a November 29, 1989 letter sent to the Respondent by the Union in which the latter requested bargaining. The Respondent, according to an affidavit from the Union's assistant director of organizing Guy Masters, did not respond to the Union's letter. The Respondent neither disputes the validity of the letter nor contends that it did not receive it. Further, it is clear from its position set forth in its affirmative defense and its response to the the Notice to Show Cause that the Respondent contends that it is under no legal obligation to bargain with the Union solely on the grounds that the certification was invalid. In view of the above, we find that the Respondent has, since November 29, 1989, failed and refused to bargain with the Union, as alleged.

The Respondent also denies par. 19 of the complaint which generally alleges that the Respondent has, since the Union's certification on October 27, 1989, failed and refused to bargain with the Union concerning its obligation to continue providing employees with the same levels of health care coverage received by employees under the Respondent's prior contract with District 6. However, it is clear that the Respondent, as noted, has

(Footnote continued)

Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). The Respondent admits that it refused to furnish the Union with the requested information but, as noted, denies that the information sought is relevant and necessary to the Union's role as exclusive bargaining representative of the unit employees. It is well established that the employee wage and employment information sought by the Union ² is presumptively relevant for purposes of collective bargaining and must be furnished on request.³ The Respondent has not attempted to rebut the relevance of the information requested by the Union. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union. Accordingly, we grant the Motion for Summary Judgment.⁴

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent is a health care institution jointly owned by Joseph F. Sirangelo, Vincent Sirangelo, Phillip Emma, Angelo Servideo, and Joseph Cillo as copartners and doing business under the name of Anna Erika Home for Adults. The Respondent maintains its principal office and place of business at 110

not bargained with the Union over any subject matter because it believes that the Union's certification is invalid. In these circumstances, we find that the Respondent has, as alleged, also failed and refused to bargain with the Union concerning its obligation to continue in effect the same levels of health care coverage previously enjoyed by employees.

² The Union requested information regarding the names and addresses of bargaining unit employees, wage changes, actual hours worked, list of fringe benefits provided, summary of bonuses provided, and any other information regarding compensation provided.

³ See, e.g., Masonic Hall, 261 NLRB 436 (1982); Mobay Chemical Corp., 233 NLRB 109 (1977).

⁴ District 6, International Union of Industrial, Service, Transport and Health Employees' motion to intervene in these proceedings is denied. See Holiday Medical Center, Inc. d/b/a Medi-Center of America, 301 NLRB No. 92 (Feb. 12, 1991). (Member Cracraft dissenting on other grounds.)

Henderson Avenue, Staten Island, New York, where it is engaged in the operation of a nursing home facility providing medical and professional care and related services. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent derived gross revenues in excess of \$250,000 and, during the same period, purchased and caused to be delivered in the course and conduct of its business fuel oil, supplies, and other goods and materials valued in excess of \$50,000 directly from points and places located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,⁵ and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held on September 7, 1989, the Union was certified on October 27, 1989, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees including nurses aides, dietary aides, cooks, porters, housekeepers and laundry personnel employed by the Employer at its 110 Henderson Avenue, Staten Island, New York facility, excluding all office and clerical employees, confidential employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

⁵ The Respondent's answer denies the jurisdiction and commerce allegations of the complaint. However, the Board in the underlying representation proceeding affirmed the Regional Director's finding that the Respondent satisfied the Board's jurisdictional standards and that it was engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, and was a health care institution within the meaning of Sec. 2(14) of the Act. In denying the jurisdictional allegations in the complaint, the Respondent seeks to relitigate matters previously decided by the Board but does not allege any changed circumstances. Accordingly, the Respondent has raised no material issues of fact warranting a hearing.

B. Refusals to Bargain

Since on or about November 29, 1989, the Union has requested the Respondent to bargain and to furnish information and since on or about the same date, the Respondent has refused. Further, since on or about October 27, 1989, the Respondent has failed and refused to bargain with the Union concerning the Respondent's obligation to continue in effect the same levels of health care coverage provided to employees under the Respondent's prior contract with District 6. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after November 29, 1989, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, refusing since on or about the same date to furnish the Union with the requested information, and failing and refusing since on or about October 27, 1989, to bargain with the Union concerning its obligation to continue in effect the same levels of health care coverage provided to employees under its prior contract with District 6, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union on terms and conditions of employment, including its obligation to continue in effect the same levels of health care coverage provided to employees under its prior agreement with District 6, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Joseph F. Sirangelo, Vincent Sirangelo, Phillip Emma, Angelo Servideo and Joseph Cillo d/b/a Anna Erika Home for Adults, Staten Island, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with 1115 Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board, as the exclusive bargaining representative of the employees in the bargaining unit, refusing to bargain with the Union concerning the Respondent's obligation to continue in effect the same levels of health care coverage that employees had been receiving under its prior contract with District 6, International Union of Industrial, Service, Transport and Health Employees.

(b) Refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning their terms and conditions of employment, including its obligation to continue providing employees with the same levels of health care coverage that they had been receiving under the Respondent's prior contract with District 6, International Union of Industrial, Service, Transport and Health Employees, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time service and maintenance employees including nurses aides, dietary aides, cooks, porters, housekeepers and laundry personnel employed by the Employer at its 110 Henderson Avenue, Staten Island, New York facility, excluding all office and clerical employees, confidential employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Staten Island, New York, copies of the attached notice marked "'Appendix.'"⁶ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 14, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with 1115 Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board, as the exclusive representative of the employees in the bargaining unit, nor refuse to bargain with the Union concerning our obligation to continue providing employees with the same levels of health care coverage that they had been receiving under our prior agreement with District 6, International Union of Industrial, Service, Transport and Health Employees, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union on terms and conditions of employment, including our obligation to continue in effect the same levels of health care coverage previously enjoyed by employees, and will put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time service and maintenance employees including nurses aides, dietary aides, cooks, porters, housekeepers and laundry personnel employed by the Employer at its 110 Henderson Avenue, Staten Island, New York facility, excluding all office and clerical employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

JOSEPH F. SIRANGELO,
VINCENT SIRANGELO,
PHILLIP EMMA, ANGELO
SERVIDEO and JOSEPH
CILLO d/b/a ANNA ERIKA
HOME FOR ADULTS

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 75 Clinton Street, Eighth Floor, Brooklyn, New York 11201-4201, Telephone 718--330--2862.